THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

ONE SOUTH STATION

BOSTON, MA 02110
(617) 305-3500

August 6, 2003

Bruce P. Beausejour, Esq.
Verizon Massachusetts
185 Franklin Street, 13th Floor
Boston, MA 02110-1585

Robert N. Werlin, Esq.
Stephen H. August
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110-3525

cc: D.T.E. 01-20 Service List

RE: D.T.E. 01-20: Motion for Reconsideration by Conversent Communications of Massachusetts, LLC

Dear Mr. Beausejour, Mr. Werlin, and Mr. August:

I. INTRODUCTION

On July 18, 2003, Conversent Communications of Massachusetts, LLC ("Conversent") filed with the Department of Telecommunications and Energy ("Department") a Motion for Reconsideration ("Conversent Motion") of the Department's July 16, 2003 stamp-approval of the final revised compliance filing ("Final Compliance Filing") submitted by Verizon New

England, Inc. d/b/a Verizon Massachusetts ("Verizon") in docket D.T.E. 01-20 Part A.[1] In that filing, Verizon sought to apply the Department-approved nonrecurring charges for loops to hot cuts, pending a Department investigation of the alternative hot cut process (Verizon Transmittal Letter at 1, July 16, 2003).

The Department opened the D.T.E. 01-20 docket on January 12, 2001 to establish new rates for unbundled network elements ("UNEs") and interconnection offered by Verizon to competitive local exchange carriers ("CLECs"). On July 11, 2002, the Department issued its D.T.E. 01-20 Part A Order ("Order"), making determinations, using the Total Element Long-Run Incremental Cost ("TELRIC") standard of the Federal Communications Commission ("FCC"), on the development of recurring and nonrecurring rates for CLECs' use of Verizon's UNEs.[2]

Subsequently, the Department issued order D.T.E. 01-20-Part A-A (January 14, 2003) deciding motions for reconsideration and clarification ("Reconsideration Order"). As directed in the Reconsideration Order, Verizon submitted its initial D.T.E. 01-20 Part A Compliance Filing on February 13, 2003[3] ("Compliance Filing"). Verizon supplemented the filing with additional alternative hot cut process materials on February 27, 2003 ("Hot Cuts Supplement"), after the Department granted Verizon's Motion for Clarification Regarding Alternative Hot Cut Process in a Letter Order (February 12, 2003) ("Hot Cuts Letter Order"). Then, on March 4, 2003, the Department informed parties that it would defer review of

---

1 Part B remains in abeyance. D.T.E. 01-20, Interlocutory Order on Part B Motions (April 4, 2001).

2 The Department established the effective date of Verizon's new tariff D.T.E. MA Tariff No. 17 ("Tariff 17") as August 5, 2002 in the Order and in an additional order on parties' motions for time extensions (July 30, 2002) ("Extension Order"). The Department directed Verizon to file interim switching rates on August 5, 2002, and, upon final approval of its Compliance Filing, to retroactively true-up rates to that effective date. Extension Order at 14. The coordinated, or manual, hot cut rate was excepted from the rates to be retroactively trued-up. Extension Order at 14.

3 Verizon supplemented its filing on February 28, March 3, and March 4, 2003, and responded to two Department requests, designated CF-1 (April 16, 2003) and CF-2 (June 26, 2003)

Verizon's alternative hot cut process from the compliance phase of this proceeding, pending the opening of a new docket.[4]

The Department then issued order D.T.E. 01-20-Part A-B (May 29, 2003) ("Compliance Order"), in which it approved, in part, and rejected in part, Verizon's initial Compliance Filing and directed Verizon to re-file it with certain corrections and revisions. Verizon submitted the revised compliance filing ("Re-Compliance Filing") on June 12, 2003, and supplemented it on July 2, 2003. On July 14, 2003, the Department issued a Letter Order ("Compliance Letter Order") approving, in part, and denying, in part, Verizon's Re-Compliance Filing and ordering Verizon to file final corrected tariff pages. Upon receipt on July 16, 2003, the Department stamp-approved Verizon's Final Compliance Filing.[5]

On July 18, 2003, Conversent filed its Motion for Reconsideration of the stamp-approval, arguing that the Wholesale Provisioning Tracking System ("WPTS") alternative hot cut process Verizon proposed in its Final Compliance Filing was not in compliance with the Department's previous orders. AT&T Communications of New England, Inc. ("AT&T") and Verizon filed comments on July 24, 2003 ("AT&T Comments" and "Verizon Response," respectively).

II. STANDARD OF REVIEW

The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

---

4 That investigation will be opened upon release of an order in the FCC's Triennial Review proceeding, which is expected to provide state commissions with additional guidance on hot cut processes. Review of the Section 251 Unbundling Obligations of incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; and the Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 ("Triennial Review").

5 On January 27, 2003, upon Verizon's motion, the Commission extended the judicial appeal period in this proceeding to 20 days after the Department's final ruling in the compliance phase.

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

III. POSITIONS OF THE PARTIES

A. Conversent

Conversent claims that the Department must reconsider its stamp-approval of Verizon's Final Compliance Filing because it "does not comply with previous DTE Orders pertaining to issues that have already been considered and decided" (Conversent Motion at 4). Conversent argues that the Department made three mistakes when it stamp-approved Verizon's Final Compliance Filing. First, Conversent states that the Department should not have approved a filing that eliminated references to hot cut options 1 and 2, because the Department previously directed Verizon to file tariff pages for hot cuts without an effective date (id., citing Hot Cuts Letter Order at 2-3).

Second, Conversent contends that it was a mistake for the Department to approve Verizon's proposal to charge the recently-approved rates for new links to hot cuts and to bill these new rates retroactively to August 5, 2002 (id.). According to Conversent, the Department has repeatedly made clear throughout this proceeding that "there would be no retroactive application of rates for coordinated hot cuts until the process and rates for WPTS were approved" (id. at 5).

Third, Conversent claims that Verizon should have, in its proposed tariff, filed descriptions of hot cut options 1 and 2 in Part B, Section 2.5 and made clear that the nonrecurring rates for hot cut options 1 and 2 throughout Part M, Section 1 would be the same rates that Verizon is currently billing for hot cuts under Tariff 17 until the Department "approves the WPTS process and rates in a subsequent proceeding" (id.). Conversent asserts that such an approach is similar to a settlement agreement reached in Verizon's Alternative

Regulation Plan docket in New York (id.). Conversent further asserts that it was a "mistake" for the Department to have approved Verizon's Final Compliance Filing "if it made such a ruling on the basis that Verizon's billing system could not accommodate both the new rate structure for new links and hot cuts, as explained by Verizon for the first time in its July 16, 2003 compliance filing" (id. at 6).

B. AT&T

AT&T requests that the Department grant Conversent's Motion for Reconsideration because Verizon's Final Compliance Filing does not comply with the Department's orders (AT&T Comments at 1). AT&T claims that the Final Compliance Filing violated the Department's Compliance Letter Order by: "(1) changing the existing hot cut rates; and (2) making those changes retroactive to August 5, 2002" (id.). AT&T further argues that the Department's Compliance Letter Order is consistent with prior Department rulings that "Verizon's existing hot cut rates must remain in effect until a more efficient alternative has been priced and approved, and that when new rates for the old fully-manual hot cut process are allowed to take effect they will not be retroactive" (id.).

In support of its position, AT&T cites the Department's Extension Order, Hot Cuts Order, and an email correspondence sent by the Department on March 4, 2003 informing parties that the Department would defer review of Verizon's alternative hot cut process from the compliance phase of the proceeding, pending the opening of a new docket (id. at 2). Although "[a]t no time did Verizon seek reconsideration of or otherwise challenge any of these decisions," AT&T asserts, Verizon nonetheless ignored the Department's prior directives "on the ground that its billing systems would not permit it to change the non-recurring charges for new loops without also changing the non-recurring charge for hot cuts made on existing loops" (id.). AT&T characterizes Verizon's assertion as "an untimely and improper motion for reconsideration" that "does not constitute information previously unknown by Verizon" (id.). AT&T also states that Verizon uses the same UNE billing systems in Massachusetts and New York, and those billing systems have already been configured to support different nonrecurring charges for hot cuts and new loops in New York (id.).

C. Verizon

Verizon responds that the Department should deny Conversent's Motion for Reconsideration "because it does not meet the Department's standard for reconsideration and is based on a misreading of the Department's previous orders in this proceeding" (Verizon Response at 1). Verizon explains that it removed all references to hot cut NRCs or processes from its tariff language "to comply with the Department's rulings and to avoid confusion by including tariff language that will not become effective until the Department completes its

review of the alternative hot-cut process" (id. at 2). Verizon argues that its decision to charge hot cut NRCs during this interim period at the nonrecurring rate approved by the Department for new loops is "fully consistent with Verizon MA's previous application for NRCs for loops and the Department's directives in this proceeding" (id.). According to Verizon, this approach enables Verizon to "charge for hot cuts under the new tariff in precisely the same manner and under the same terms as it did under the superseded tariff, i.e., a hot cut loop is charged the NRCs applicable to a new loop at rates which the Department has set for new loops" (id. at 4). Verizon also contends that it has changed its billing system to accommodate the new rate structure for NRCs, and "it will not be possible to bill under the old, three-block rate structure without significant additional changes to the billing system" (id. at 5) (footnote omitted).

IV. ANALYSIS AND FINDINGS

In its Compliance Letter Order, the Department reiterated that Verizon could not implement and charge for its alternative hot cut process until the Department completed a thorough investigation of the WPTS process and its costs. Compliance Letter Order at 7, citing Hot Cuts Letter Order at 2-3. The Department further emphasized that "Verizon may not charge the new rates for its manual hot cut process until the Department has completed its review of the WPTS process." Id., citing Reconsideration Order at 146. In response, Verizon submitted its Final Compliance Filing, "made in accordance with the Department's Letter Order dated July 14, 2003" (Verizon Transmittal Letter at 1, July 16, 2003). Conversent and AT&T counter that Verizon's final filing does not comply with previous Department Orders (Conversent Motion at 4; AT&T Comments at 1).

The disagreement between the parties is a result of the Department not being explicit as to what rates would apply for hot cuts provisioned during the interim period before the Department completes its investigation of the WPTS process and its costs. Verizon interpreted the Department's orders as implicitly requiring it to charge hot cut NRCs during this interim period at the new nonrecurring rate approved by the Department for new loops. Verizon contends that such an approach is "fully consistent with Verizon MA's previous application for NRCs for loops and the Department's directives in this proceeding" (Verizon Response at 2).

Conversent and AT&T, however, disagree with Verizon's interpretation but only insofar as its applies loop rates from the most recently approved tariff instead of from the superceded tariff. In other words, AT&T and Conversent do not disagree with that aspect of Verizon's filing that would enable Verizon to "charge for hot cuts under the new tariff in precisely the same manner and under the same terms as it did under the superseded tariff, i.e., a hot-cut loop is charged the NRCs applicable to a new loop at rates which the Department has set for new loops" (see id. at 4). The issue, then, is whether we intended that Verizon should charge the former NRCs for new loops or the new NRCs.

We now make clear our intent that Verizon charge hot cut NRCs during this interim period at the new nonrecurring rate approved by the Department for new loops. This approach is fully consistent with the Department's directives in this proceeding and Verizon's previous application for hot cut NRCs. In addition, because we now make it clear what hot cut rates we intended Verizon to charge until the alternative hot cut process examination is complete, those rates (i.e., the new NRCs for new loops) also shall be retroactive to August 5, 2002 in order to be consistent with our earlier directives that contemplated that all new rates, except the rates for the manual hot cut process, would be applied retroactively from August 5, 2002.

As to Conversent's argument that the Department should not have approved a filing that eliminated references to hot cut options 1 and 2, the Department fails to see the relevance of this issue given the Department's decision to open a new docket to address Verizon's alternative hot cut process. When the Department ordered Verizon to file illustrative pages for its alternative hot cut process without an effective date, the Department had yet to render its decision to open a separate hot cut docket. In fact, the Department requested illustrative tariff language so that "[u]pon receipt of Verizon's filing, the Department [could] determine what additional procedures, if any, may be necessary for review of the proposal." Hot Cuts Letter Order at 3. Because the Department has already determined what additional procedures are necessary, the Department's previous directive that Conversent now claims Verizon should have applied to its Final Compliance Filling is no longer relevant. Accordingly, the Department finds that Verizon's decision to eliminate from its Final Compliance Filing references to hot cut options 1 and 2 complies with our Compliance Letter Order.

V. ORDER

Accordingly, after due consideration, the Department finds that Verizon has complied with the Department's orders in this proceeding, for the reasons discussed above. The Department therefore denies Conversent's Motion for Reconsideration.

By the Commission,

_____/s/_____
Paul B. Vasington, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner